in my view, a clear difference between prohibiting an act and imposing a duty to do something on the happening of a certain event.

It is this difference which, in my opinion, distinguishes the present case from those to which I have referred. There was here an absolute prohibition against being out of doors during a specified period and *mens rea* is not, in my judgment, a necessary constituent of the offence.

The sentence of eighteen months was undoubtedly severe but in view of the appellant's previous conviction for extortion under section 384 of the Penal Code for which he was sentenced to nine months imprisonment, I am unable to say that it was so manifestly excessive as to warrant interference by this Court.

In the result the appeal must be dismissed and the conviction and sentence are affirmed.

Appeal dismissed.

Solicitor: *M. Ismail.*

LOKE WAN THO v. CHRISTINA LOKE

[O.C.J. (Buttrose J.) May 19, 1961]

[Singapore — Divorce No. 35 of 1960]

Divorce — Alimony pendente lite — Fixing amount to maintain rank and position.

This was an application for alimony *pendente lite* to provide the respondent wife with an income suitable to her position until the suit is heard.

Held: although the usual proportion which is adopted is one-fifth or in the case of substantial incomes one-eighth, where the income is very large it is the practice not to have regard to the question of proportion so much as to fix a sum which appears to be adequate having regard to the wife's position in life and necessities.

APPLICATION.

K. A. Seth for the applicant/respondent

G. Hill for the respondent/petitioner.

Buttrose J. (delivering oral judgment): The object of this application, which is for alimony *pendente lite,* on which we have been engaged for the last 3 days is to provide the respondent wife with an income suitable to her position until the suit is heard. I have approached the matter in the first instance without having regard to the maximum amount which may be awarded under the Ordinance, namely, one-fifth of the husband's average nett income etc. or to the usual proportions adopted in such cases. I have considered the problem independently of these questions at the outset with a view to arriving at a decision as to what I conceive to be a reasonable and just amount to award the respondent by way of alimony *pendente lite.*

Having done so, I have then considered that figure in the light of the maximum amount I can award and the usual proportions adopted. I am aware that the usual proportion which is adopted, is one-fifth which is considered to be a suitable allowance or in the case of substantial incomes one-eighth. Where however the income is very large, it is, I think, the practice not to have regard to the question of proportion so much as to fix a sum which appears to be adequate having regard to the wife's position in life and necessities and not minutely to go into the figures, which in this case I do not propose to do. I must fix an amount which would be sufficient to maintain the respondent in the rank and position of life which she has hitherto occupied or putting it in another way, I must award such a sum as will supply the respondent with the necessaries, comforts and advantages incidental to her station in life. I bear in mind in this case the petitioner is a millionaire and that he and the respondent have lived their married life in keeping with that status at Mallaig, the matrimonial home where the respondent has continued to reside after the petitioner left in February 1960.

I have considered the means both of the petitioner and the respondent and also the income tax position. As a result of the figures with which I have been supplied by the industry of counsel and their advisers and which appear in the evidence as exhibits, I consider that a nett sum in the vicinity of $2,500 to $3,000 a month would be a proper award in this case by way of alimony *pendente lite.* I should like counsel to work out what is the gross amount required to return a nett figure of not less than $2,750 a month in the hands of the respondent which is to include her own income, and I will make a formal order accordingly of payment of such gross amount by the petitioner to the respondent by way of alimony pending suit. I think I have perhaps been over generous in this matter but if I have erred, I prefer to do so on the side of generosity rather than parsimony.

On the question of costs, I think, in this case the proper order to make is that the respondent must have her costs of this application and the Registrar will be given the appropriate directions in the final Order to be drawn up and agreed by counsel and submitted for my approval on Tuesday next the 23rd May. There will be liberty to apply.

Order accordingly.

Solicitors: *Rodyk & Davidson; K. A. Seth.*

SIOW CHOON SEE v. PUBLIC PROSECUTOR

[A.Cr.J. (Adams J.) May 4, 1961]

[Muar — Criminal Appeal No. 20 of 1961]

Criminal Law and Procedure — Plea of guilty — Retraction — Jurisdiction of Court.

The accused was charged with failing to comply with an order made under section 15 of the Prevention of Crimes Ordinance, 1959. On being brought before a Magistrate the accused pleaded guilty, but the Magistrate decided that he had no jurisdiction to try the case and directed that the case be transferred to the Sessions Court. In the Sessions Court the learned President refused to allow the accused to plead not guilty on the authority of the *dicta* of Rigby J. in *Public Prosecutor* v. *San Kim Kai,* (1) because the accused had already pleaded guilty before the Magistrate. On appeal,

Held: (1) the Magistrate had no jurisdiction and he could not have recorded any plea. The learned President being competent to try the case should have entered the plaintiff's plea however frivolous it might appear to be to him before he heard the evidence.

Per Adams J.: "The *dicta* of Rigby J. in *San Kim Kai's Case* refers to a retraction of a plea of guilty. Before a plea can be retracted there must have been a plea taken by a Court competent to try the case."

Case referred to:—

(1) *Public Prosecutor* v. *San Kim Kai* [1960] M.L.J. 265.

MAGISTRATE'S CRIMINAL APPEAL.

Adams J. (delivering oral judgment): The accused stood charged with the offence of failing to comply with the requirements of an order made under section 15 of the Prevention of Crimes Ordinance No. 13 of 1959. On his arrest he was produced before the learned Magistrate at Muar and the case was brought in the Magistrate's Court. He was charged before the Magistrate on the 15th of March, 1961 and pleaded guilty. He was produced again before the learned Magistrate on the 27th of March when the learned Magistrate quite rightly decided that he had no jurisdiction to try the case and directed that it shall be transferred to the Sessions Court.

The accused was produced in the Sessions Court on the 28th of March, 1961. When he was charged before the learned President he attempted to plead not guilty. The learned President, however, refused to allow him to do this as he held that the accused had already pleaded guilty before the learned Magistrate and following the *dicta* of Rigby J. in *Public Prosecutor* v. *San Kim Kai,* (1) the learned President saw no good reason why the accused should, as he put it, "retract his plea" because the accused admitted that he had been out of the house at the time stated in the charge.

The *dicta* of Rigby J. in *San Kim Kai's case* refers to a retraction of a plea of guilty. Before a plea can be retracted there must have been a plea taken by a Court competent to try the case. The proceedings before the Magistrate were a nullity. The Magistrate had no jurisdiction and he could not have recorded any plea. The first time the accused was charged before the learned President who was competent to try the case he pleaded not guilty and the learned President should have entered that plea however frivolous it might appear to be to him before he heard the evidence.

The appeal is therefore allowed and the case must go back to the President with the direction that the accused's plea of not guilty be entered and the case be tried.

I really do feel that it is time that the Police learned the relevant provisions of the Courts Ordinance which has, after all been on the Statute Book for over ten years and took a little care to ensure that a criminal case is brought in a Court that has jurisdiction to try it.

Appeal allowed.

LOH CHIK SAN v. LOH CHAK WAN

[A.C.J. (Ismail Khan J.) May 8, 1961]

[Seremban — Civil Appeal No. 4 of 1960]

Landlord and tenant — Notice to quit — Tenant not in personal occupation — Notice returned to landlord indorsed "gone away" — Whether valid determination of tenancy.

The sole question in this case was whether a notice to quit by a landlord to the tenant (who had sublet nearly the whole of the premises except a small room, and who was not in personal occupation of the said premises or room) by registered post and returned by the Post Office with the indorsement "gone away" was sufficient to determine the tenancy.

Held: the appellant did not personally occupy the said premises and the presumption of service was rebutted by the indorsement by the postal peon's certificate "gone away". As such there was no valid determination of the tenancy.

Per Ismail Khan J.: "Had the notice to quit been served according to law one calendar month from the date of the determination of the tenancy, it would have been sufficient in law. The prerequisite condition for determination of a periodical monthly tenancy, whether it is in respect of premises under the Control of Rent Ordinance or outside of it, is a valid and sufficient notice to quit. That must be determined by the Common Law for there is no statutory provision regulating the length of notice and mode of service."

Cases referred to:—

(1) *Gresham Howes Estate Co.* v. *Rossa Grand Gold Mining Co.* [1870] W.N. 119.

(2) *Hogg* v. *Brooks* (1885), 15 Q.B.D. 256.

CIVIL APPEAL.

Edgar Joseph Jr., for the appellant.
Lall Singh Muker for the respondent.

Ismail Khan J.: The appellant who is the principal tenant of controlled premises No. 7, Singapore Street, Seremban, appeals against the judgment and order of the President, Sessions Court, Seremban, granting possession of the premises to the respondent, the owner and landlord of the premises.

The respondent let the premises to the appellant as far back as 1937 on a periodical